IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO. 391 OF 2007**

Gulabrao Baburao Karanjule ..Applicant
V/s
The State of Maharashtra ..Respondent.

Mr. Shirish Gupte, Senior Advocate i/b Mr. P.D. Dalvi, Advocate for the applicant.

Mr.D.S. Mhaispurkar, APP for the State.

Mr. P.M.Pradhan, Advocate for the intervenor.

**CORAM : J.H. BHATIA, J.**

**DATE : 12TH MARCH, 2007.**

P.C.

. Heard Mr. Shirish Gupte, learned Senior Counsel for the applicant, Mr. Mhaispurkar, learned APP for the State and Mr. Prahdan, learned Counsel for the first informant. Perused the investigation papers.

2. The applicant seeks anticipatory bail in Crime No. 399/2006, registered at Ambarnath Police Station for the offence punishable under Section 302 r/w section 34 of Indian Penal Code, as well as under the Indian Arms Act. According to the applicant, he is being

falsely implicated in this case merely because of political rivalry. The application is opposed by the prosecution, as well as by the intervenor.

3. As per the prosecution case, first informant Shivaji Shinde, is resident of Ambarnath and carring on the business of Sugar Cane Juice. The applicant and said Shivaji Shinde are known to each other for last about 35 years and according to the first informant, he himself had brought the applicant from the village to Ambarnath and initially for some time the applicant was also living in the room of Shinde. Presently, the applicant is President of Municipal Council, Ambarnath. Just behind the house of Shivaji Shinde, there was a Tabela/Cattle Shed of the present applicant, where his she- buffaloes were kept. On 24/10/2006 at about 7.15 A.M. wife of Shivaji went to throw the dust litter behind the house. At that time, a security guard of the present applicant, who was appointed to watch the construction of the present applicant, abused her. Thereafter Shailesh son of Shivaji Shinde had some quarrel with the said security guard. In respect that incident reports were lodged by both the parties at police station. As per the FIR lodged by Shivaji

Shidne, on 24/10/2006 at about 15.35 hours he was sitting at the counter of his shop and his son Shailesh was cleaning the sugar canes. At that time, abruptly he heard sound of gun shot. Immediately Shivaji came out from the counter and found that his son Shailesh was injured with a gun shot and he was holding his abdomen with both the hands. At the same time, he also saw the present applicant Gulabrao Karanjule and his another security guard Rakesh Yadav running away from the lane by the side of Photo studio towards the place where the construction of the applicant was going on. At that time, the present applicant was holding a revolver or some country made pistol, while Rakesh Yadav was holding a long barrel gun/rifle. Shivaji tried to chase them. At that time, two more persons, who were also companions of the present applicant, shouted "Aya, Aya, Bhago, Bhago". Saying so, those two persons also ran away in the same direction. Shailesh was taken to Jatale Hospital. On the way Shivaji informed the police station about the incident on his mobile. As per the direction of Doctor of Jatale hospital, Shailesh was taken to the Choudhari hospital and from there he was referred to Central Hospital, where he was declared dead. After that on the same day at 17.35 hours Shivaji

Shinde went to the police station and lodged a detailed report, which was reduced into writing as F.I.R. On the basis of this, offence was registered against the present applicant, as well as security guard Rakesh, who has been arrested. A rifle is also seized from him and as per the C.A. report the bullet, which hit Shailesh was fired from the said rifle. There are at least three more persons, who claimed to be eye witnesses and in their statements, they supported the prosecution case indicating that the present applicant was present along with Rakesh and as per the direction given by the present applicant, Rakesh had fired at Shailesh. However, it appears that later on two of them changed the statements and stated that at the time of incident present applicant was not present and only Rakesh alone was present and he had fired.

4. At this stage, it may be noted that the present applicant had filed one application for anticipatory bail before the Sessions Court, which came to be rejected. Thereafter he filed Criminal Application No. 346/2007 before this Court for anticipatory bail, which came to be disposed on 5th February, 2007 without going into the merits. At that time, it was pointed out that

first informant Shivaji Shinde had filed Writ Petition No. 2612/2006 against the police seeking direction to arrest the present applicant. According to him, in spite of sufficient evidence the police are avoiding to arrest him. It appears that in the writ petition Division Bench had passed the order of status quo and according to the police the present applicant was not arrested in view of the status quo order. It was contended by both the parties at that time that the Division Bench, was going to consider in the writ petition, whether arrest of the present applicant was necessary or not. In view of this, while continuing interim protection till decision of the writ petition by the Division Bench the said application for anticipatory bail was disposed of on 5/2/2007. Admittedly, on 6/1/2007 the writ petition also came to be disposed off, in view of the statement made by the police officer that charge-sheet was filed and the present applicant was yet to be arrested. He had explained that in spite of all possible attempts the applicant could not be arrested as he was absconding. In view of the statement made by the prosecution that action was being taken against the present applicant, the said writ petition came to be disposed of and all the interim orders including the

order dated 22/12/2006 granting status quo came to be vacated. It is in these circumstances that the applicant has filed the second application for anticipatory bail before this Court.

5. Mr. Shirish Gupte, leaned Senior Counsel and the learned APP have taken me through the police papers extensively. According to Mr. Shirish Gupte, immediately after the incident, when the first informant was taking his son to the hospital he had informed the police on mobile phone that a man of Gulabrao Karanjule had shot his son with a fire arm. According to him, in the FIR, which was lodged two hours after the incident, it was alleged that the present applicant and his security guard Rakesh Yadav were seen running away with fire arms. He also pointed out that under the influence of Shivaji Shinde, his employee and some others had intentionally implicated the present applicant but later on they have changed the statements, clearly indicating that the earlier statements against the present applicant were made under the influence of Shivaji Shinde. He also pointed out that the statement of one Nilesh Vanjari, Police Constable who was provided to the preset applicant as a security guard by police, was

recorded and that statement also shows that the present applicant was in his bed room, when wife of Rakesh came to him informing that Rakesh had fired and injured Shailesh. He also relied upon the statement issued by the office of the Municipal Council to show that the present applicant was attending his official duties regularly, even after the incident and was not absconding.

6. On the other hand, learned APP Mhaispurkar contended that the statements of two eye witnesses, who had seen the present applicant at the scene of offence and instigating Rakesh to fire, were recorded on the same day and statement of one witness was recorded on 28/10/2006 to the same effect. However, later on two of the witnesses changed their statements apparently under the influence of the present applicant and it shows that the present applicant has already started tampering with the prosecution evidence and investigation. Mr. Gupte, pointed out that in the affidavit filed by the Police Inspector Raju Naik in the Writ petition, he had taken his stand that the present applicant was a conspirator and not abettor. According to Mr.Gupte this runs contrary to the original prosecution story that the

present applicant was present at the scene of offence and abetted commission of the crime. Learned Counsel for the intervenor strongly contended that even though the present applicant might be attending his official duties police were not interested in arresting him, while according to police, whenever the attempt was made the applicant was not found and therefore he could not be arrested.

7. After giving due consideration to the prosecution story, nature of the offence and statements of several witnesses, I find that the serious offence of murder was committed and in view of the result of investigation, so for carried out and particularly C.A. report, it appears Rakesh Yadav, who was an employee, as a security guard, of the applicant, had actually fired and killed Shailesh. There are number of eye witnesses, who stated on the same day that the present applicant was also present along with Rakesh and as per the direction given by him, Rakesh had fired at Shailesh. It is true that later on two of such witnesses changed their version. It could be that the present applicant, being the president of Municipal Council, is a powerful politician in that area. There may be possibility of

his implication due to political reasons and the possibility of his tampering with evidence and pressurising the witnesses to withdraw their statement also cannot be ruled out. While as per the some of the statements, it is clear that the present applicant was present at the scene of offence and he actually instigated, as per the investigating officer, present applicant was a conspirator and as the result of the conspiracy this offence of murder was committed. In either case the offence is serious and merely because the present applicant happens to be the president of Municipal Council, he cannot be granted anticipatory bail. In such a serious offence of murder it will not be proper to grant anticipatory bail. Charge-sheet is filed only against Rakesh, while present applicant is shown as absconding. The present applicant could not be arrested so far, even though period of 5 months have passed and therefore, in real sense investigation is not completed. In such a serious offence custodial interrogation of the present applicant appears to be necessary.

8. For the aforesaid reasons, the application stands rejected.

**(J.H. BHATIA, J.)**